CESAC
Customs Electronic Systems Action Council

28 July 2009

Mr. Christopher Rogers, Chief
Trade and Marine Stewardship Division
Office of International Affairs
National Marine Fisheries Service
1315 East-West highway, Room 12657
Silver Spring, MD 20910

RE: "*Electronic Filing of Trade Documents for Fishery Products*"
Docket Number: 090223227-9691-01
RIN 0648-AX63

Thank you for the opportunity to comment on your Advance Notice of Proposed Rulemaking (ANPRM) which appeared in the Federal Register on May 8, 2009 and is referenced, above. The participants of our group also wish to thank and commend you for your presentation of the ANPRM at our June meeting.

Our Council of technical experts first began meeting over twenty years ago to discuss development and implementation issues associated with Customs' earliest automation efforts involving the ocean manifest. This was among the first examples of cooperative construction of the automated relationship between the trade and the government. In subsequent years we expanded our membership to include the rail, air, and truck transportation providers as well as brokers/forwarders, non-vessel operators (NVOC), marine terminal operators, service providers, software providers, and port authorities. All told, the group essentially considers the perspectives of all the automated private sector actors in the international supply chain.

Our first and foremost comment on your rule is to commend your outreach to the private sector in the form of the advanced proposed rule. We have been strong supporters of the ACE ITDS initiative for years and are gratified to see the NMFS developing protocols to leverage this system to the benefit of expediting cargo traffic. It is equally commendable to see your outreach in the form of an advance proposal. Over the years our group can vouch for the fact that, regardless of how simple or elementary an issue might be, reality soon reveals it to be much more complex. In the realm of the international supply chain, even the most elementary developments have significant collateral ramifications. The opportunity to first comment on your initiative at this high level will certainly promote a thorough fact-finding leading to a well researched and thought out Proposed Rule, and an achievable, efficient, reliable, and constructive final product.

To that end, we have several specific comments:

There Are Many Parties Associated With the Same Shipment

From manufacture/harvest to destination/consumption there are many entities who each contribute a link in the international supply chain. Each one is contracted to deliver only a piece of the pie and does not necessarily know what others are doing. In fact, for business purposes, in many transactions much is kept confidential in order to protect a company's business portfolio from competitors.

Each Entity Owns Data

With regard to the supply chain, the government realizes and established in the Trade Act of 2002 that different entities are responsible for generating different pieces of data. The government therefore looks to the party responsible for particular data to provide it In Custom's 2002 rulemaking known as the "Advance Manifest" or "24-Hour Rule" the ocean carriers were required to file all their manifest data prior to lading the cargo on the vessel overseas – before it left the last foreign port bound for the USA.

In 2002 ocean carriers began automated advanced filing of all fourteen data elements that are now found in their pre-departure manifest.

1. *Last foreign port before the vessel departs to the United States;*
2. *The carrier SCAC code;*
3. *The carrier-assigned voyage number;*
4. *The date the vessel is scheduled to arrive at the first U.S. port;*
5. The numbers and quantities from the ocean carrier's bill of lading;
6. *The first foreign port where the carrier takes possession of the cargo;*
7. The Harmonized Tariff Schedule numbers to the 6-digit level;
8. The shipper's complete name and address from the bill of lading;
9. The name and address of the consignee from the bill of lading;
10. *The vessel name, country of documentation, and official vessel number;*
11. *The foreign port where the cargo is laden aboard;*
12. The Hazardous Material code;
13. *The Container Number;*
14. The container seal number.

Of these fourteen data points, the ocean carrier initiates only eight data points (italicized, above) and those are the data points directly related to the transportation of the cargo. The other six are reported by the ocean carrier from data received from their customers and involve specific information about the customer's cargo and their loading of that cargo into the ocean containers.

Having then developed a system whereby reliable automated transportation information is being received and screened, Customs is currently in the process of implementing a rule whereby the importer or their designated agent provides automated shipment related

data. The 2009 Customs Interim Final Rule known as the "Importer Security Filing and Additional Carrier Elements" or known more popularly as the "10+2" requires the importer or their agent to file in advance ten data elements specifically about the shipment. When the rule is fully enforced in January 2010 Customs will look to the ocean carrier for the transportation elements and to the importer or their agent for the shipment elements.

Therefore, NMFS must understand who owns the data necessary to determine admissibility. Only that party or their designated agent should be liable to file, validate, or document that information.

Virtually All Shipment Data Exists Electronically But May Not Be Readily Accessible

In the supply chain, each of the participating entities provides a portion of the overall picture. Transportation companies are contracted to furnish transportation, brokers provide information on behalf of their customer, terminal operators handle containers according to instructions from their customers, and the shippers and importers provide shipment information to their partners as necessary. In the contemporary world of international trade, virtually all this information is transmitted and/or recorded electronically in any of a number of proprietary systems. The existence of numerous legacy systems supporting the same business is not uncommon. While not necessary in the recent past, more and more of this data is being set up to pass to government officials according to their regulatory mandate. Considerable time and expense is consumed to set up, convert, and report data currently residing on proprietary systems. The government should be cognizant of these legacy systems when requiring any change in the trade's automation. Business must undergo comprehensive regression testing to make sure developments in one system do not generate negative results in another and that the automated relationship with partners is unaffected.

Use Existing Data Formats

Through the development of automated relationships and for reporting purposes, data formats currently exist and are used for particular purposes. Whether related to commodity description, locations, conveyance, or commercial entities, information is currently being used to communicate either between business partners or with governments. We respectfully recommend that, if necessary, NMFS utilize existing formats rather than impose new ones. It seems logical to us that, if necessary, the one would change to accommodate the many.

Confidentiality

In many cases there is a need to restrict distribution of information in order to maintain business confidentiality and to prevent loss of business share to a competitor. With regard to both shipment and transportation, rates, partners, locations, fees, origins, destinations, customers, and commodities are judiciously guarded to prevent competitive encroachment. Where, for business purposes, data does exist in an electronic format, it may reside in architecture restricting its automated transmission to an outside entity.

Business necessity drives the creation of software and this is usually compelled by the need to pass information to your business partner. Designing a system with the specific notion of sharing certain data with the government is costly.

Electronic Information Must Be Clear and Actionable

Regardless of how the automated systems are constructed and sharing protocols designed one fact remains: whoever sees the information must understand it. The information must be operationally functional. Since all data messages, whether between the private sector partners or the government regulators, are functional, any new message created within the ITDS context must be clearly understood by both the public and private participants. Each party, whether primarily related to the conveyance or to the shipment, must know what action is required, who is required to take action, and the degree of urgency.

Customs, for example, has published a list of Disposition Codes available to both the X12 and to the CAMIR electronic formats. For each code the message and corresponding action is clearly understood by both the sender and receivers. Some codes require the cargo's movement to be immediately paused while other codes allow the cargo to continue while additional information or documentation is provided in parallel. Whether viewed by managers or by organized labor, the message must convey information allowing the shipment to proceed to delivery.

The single most important matter common to supply chain actors is, "cargo velocity." The state common to all shipments in the supply chain is 'momentum.' If a shipment is made to pause it takes energy and expense to resume movement. In the business world, some invest much more heavily than others in order to maintain a technological edge which must not be compromised by insufficient or unclear messaging. Whether it's the broker or the transportation provider, their customer wants to know now what is going on with their cargo. The supply chain partners who maintain the highest velocity and who know the real-time status of the cargo are likely to be the most viable. The corollary is, "if the freight isn't moving, it's costing someone money."

Involve the Private Sector in the Implementation

All parties support the single portal concept and want the NMFS and other participating government agencies to successfully integrate into the ITDS. It makes sense to continue to work with the trade to roll out the program through the implementation and post-implementation phase to make sure it works. By listening at key touch-points the NMFS will quickly become aware of any technical glitches or unanticipated bumps in the road. At least at the outset, working with one foot in the legacy paper environment and one in the automated environment decisions can be reliably made as to when the paper processes can be terminated without negative ramifications. Not all parties are able to comply immediately. A rule should be patiently phased-in to allow for complete and proper integration of new processes and policies.

Enable Rapid Response and Timely Action

As we stated above, if NMFS wishes to impact or access information related to the cargo, it should be done so the cargo's movement is not paused. Advance notice, actionable messages, 24x7 on site NMFS staff, working relationship with associated government partners, knowledge of the local infrastructure, and familiarity with the local business representatives is essential to process an action whether it is a simple inquiry, a request for documents, or a "hold" notice for exam. If cargo has passed a checkpoint, it should not be called back since it would take considerable expense to do so – unless a clear and actionable 'stop' message had been sent to the all parties prior to arriving at the checkpoint. Considering cargo velocity over the various modes of transportation one can realize the significance of providing advance information.

Conclusion

We certainly thank you for the opportunity to comment on the development of the NMFS integration into ITDS. With the number and magnitude of ramifications associated with any change in an automated relationship one would expect to see a related set of process and policy issues. Our participants are happy to discuss their particular business involvement in these matters. I invite you to contact us should there be any way we can support the construction of a final product or its implementation.

Respectfully yours,

/signed/

Tim Perry, Chair
CESAC
C/o 1667 K Street, NW, Suite 400
Washington, DC 20006